ERIC Document Resume	See Instruction Sheet	DATE OF RESUME 8/13/65	DATE RECEIVED 8/9/65

A. PUBLICATION DATA

1. ERIC NUMBER	2. ORIGINATOR CONTROL NO(S).	3. IDENTIFICATION NO.
ED001946	N.A.	N.A.

4. AUTHOR(S): Green, Donald Ross and Gauerke, Warren E.

5. TITLE OF DOCUMENT ABSTRACTED: If the Schools Are Closed ...

6. PUBLICATION TITLE: N.A.

7. EDITOR(S): N.A.

9. PUBLISHER OR SOURCE: Southern Regional Council, 63 Auburn Avenue, N.E. Atlanta, Georgia

10. VOL.	11. PAGES	12. MO./YR.	13. TOTAL PP.
N.A.	N.A.	1959	40

8. PLACE OF ORIGIN: ORG. Southern Regional Council; ST. 63 Auburn Avenue, N.E.; CITY, STATE Atlanta, Georgia

TELE. EXT. INST/LOC CODE

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TYPE OF REPORT: PROPOSAL ☐ IN-PROGRESS ☒ FINAL ☐ FOLLOW-UP ☐

OTHER ERIC REFERENCES:

ERIC SATELLITE CODE

B. INDEXING DATA

14. SUBJECT AREA

15. TYPE OF ENDEAVOR: Report

16. INDEXING TERMS (6-12)

private schools	Federal aid	Federal-State relationships	tax support
school desegregation	State action	Supreme Court decision	
tuition grants	financial support	public schools	
	accreditation	state-church separation	

17. ABSTRACT (MAX. 250 WORDS)

Underlying the discussion of shifting from a public to a private school base in an effort to avoid desegregation are certain values and principles -- moral, political, and educational. The first principle is that, in a democracy, there are no superior persons due to class or ethnic distinctions. The second is that the Constitution of the United States as interpreted by the courts is the law of the land and must be respected. Third, it is assumed that the State is the key to educational development in America; education is basically a State responsibility rather than a local obligation. The key to the system of public education is the right to tax for public schools and to compel citizens to pay taxes. Finally, public funds and property must be appropriated or used solely for the benefit of public schools, not for the aid of any private, parochial, or sectarian school. This consideration involves the principle of separation of church and state.

The facts demonstrate that a system of private schools, in a mixed society such as exists in much of the South, is unworkable -- legally, socially, and economically. Among the practical obstacles to a tuition grant program for private schools are: financial difficulties arising from loss of Federal funds and funds from many other sources; loss of variety in the programs offered students; the problem of accreditation standards; the problem of deciding where responsibility regarding school policies will lie; and the unavailability of professional help of State education departments to solve problems of school organization. If a tuition-grant system replaces public education, the cost of education will increase tremendously. At present school budgets, thousands of children would be denied schooling; all but a few would get markedly inferior education.

ERIC No.

18. SOURCE OF ABSTRACT

C. FUNDING DATA

19. SUPPORTING ORGANIZATION	20. DIVISION OR DEPT.	21. CONTRACT NO. / PROJECT NO.
	22. TOTAL COST OF PROJECT	
	23. DURATION OR PROJECT	U.S. Department of Health, Education, and Welfare Office of Education

ERIC Form 1

SCHOOL DESEGREGATION--GENERAL

ED001945

If the Schools are Closed...

A Critical Analysis of the Private School Plan

Donald Ross Green • Warren E. Gauerke

Office of Education-EEOP
Research and Materials Branch

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If the Schools are Closed...

A Critical Analysis of the Private School Plan

by

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SOUTHERN REGIONAL COUNCIL
63 Auburn Avenue, N. E.
Atlanta, Georgia
1959

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I. Introduction

ONLY A FEW YEARS ago the question, "Can a private school system really work?" would never have been asked. Recently, officials in several states have proposed private schools to avoid integration. Georgia, for example, has enacted certain laws setting up "a private school plan."

Although well-known, it will be helpful to review the current situation. Legal suits in Clarendon County (South Carolina), New Orleans and Atlanta have led to court orders to desegregate "with all deliberate speed"; at least two Florida counties are presently involved in litigation. There is no reason to doubt that orders will in time be directed at localities in all of the six states still completely segregated. The steady stream of suits to desegregate continues.

At this point, law in some states requires the governor to close any school where such an order takes effect. If one or several schools are closed, as the events in Virginia strongly suggest, sooner or later all the public schools in the state must be closed or the particular schools involved reopened on a desegregated basis. The tuition grant proposal is clear recognition of this probability.

In short there are only three alternatives:

1. To abandon completely state and local public support of education. No one has seriously suggested this, although Prince Edward county (Va.) has ended local support.

2. To desegregate. The likely fact is, however, that desegregation will not, especially in the Deep South, result in a large influx of Negroes to formerly all-white classrooms. The careful use of pupil placement laws such as exist in Alabama and North Carolina; freedom of parents to select any school in a local district if not overcrowded, as in Baltimore and Louisville; optional tuition grants; the improvement of colored schools—these measures will probably slow the rate of desegregation substantially. North Carolina, for example, desegregated in three cities in 1957. To date less than fifteen Negroes have been admitted to formerly all white schools under the pupil assignment law.

3. To close all public schools and set up a private school "system" by giving tuition grants to all school-age children. This proposal is under discussion in several states and has been enacted into possibility by six: Alabama, Arkansas, Georgia, Louisiana, North Carolina, and Virginia.

Let us look at the merits of this third alternative. A number of legal, financial, and other practical problems, as well as several questions of principle,[1] must be faced if the "private school plan" is to be considered seriously. Because many say "let's try it" and because it is very frequently

1. The discussion of principles is reserved until the end of this pamphlet. The reader who wishes to know the authors' premises in advance can, however, turn at once to Part VII.

assumed that the public schools will reopen after a year, the difficulties of reopening will also be looked at.

The question under examination is whether or not private schools can replace the public schools completely. The statements below apply only to this hypothetical situation and do not apply to any locality in which some public schools, whether many or few, continue to exist. Nothing that follows is intended to disparage existing private schools. The independent and religious private schools have made many valuable contributions to American education and the option of sending one's child to a private school should be preserved.

II. Financial Difficulties

ALTHOUGH THE LEGALITY of a tuition grant system is in doubt, and will be discussed in Part IV, some such system is probably the only approach with any possibility of being held legal. For the purpose of discussion let us at this point assume that it is legal. To take this position, we must also believe that the only thing the state does is give money to parents at so much per child.

In considering costs it will also be assumed that at least the same range, variety, and quality of education currently offered by the state of Georgia (which will serve as a typical example) should be maintained. Georgia and all the states in the southeast have for many years spent less per pupil (albeit a higher proportion of per capita income) and ranked lower in quality of education offered than the national median. The region has higher illiteracy rates in both the white and colored populations than any other region of the United States.[2] Recently this situation has begun to improve. It is reasonable to assume that there is no desire to give up the idea of improvement, much less to accept deterioration.

It may be that the public schools are less efficient and more costly (for what they accomplish) than is necessary. Nevertheless, they cost less than a comparable private system would cost. It can be shown that they cost less and do more than the private schools already in existence. It can also be shown that if the public schools are abandoned, some additional financial problems will be created. The analysis in the following pages is based principally on Georgia. But Georgia is selected only to illustrate facts and problems which would be true of all the South.

CURRENT COSTS

To illustrate the point that public schools are substantially cheaper than private schools already in existence, Table I shows the per pupil costs of public education in Georgia and costs for a sample of private schools in the Atlanta area and in four southeastern states. In reading this table several facts not in the table should be noted.[3]

1. Parents of children in the private schools frequently report special assessments and expenses not listed as costs by these schools. No adequate data concerning these expenses could be obtained, but in some schools, at least, they are substantial. For example, a group in the Atlanta area start-

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2. B. S. Bloom, "The 1955 Normative Study of the Tests of General Educational Development," *School Review*, 1956, 64, 110-124. E. Ginzburg and D. W. Bray, *The Uneducated*. New York, 1953. C. D. Hutchins and E. C. Deering, *Financing Public School Facilities*. U.S. Office of Education, MISC. No. 32, 1959.

3. No Catholic schools are included in this table for two reasons: first and foremost is the fact that teachers' salaries are a negligible factor in most parochial schools. In some cases the teachers are paid $50 a month and in others almost nothing. Secondly, teacher-pupil ratios are typically over 1:50 in these schools. Consequently their cost figures are in no way comparable to those cited in this paper. It should also be noted that the Church pays a substantial portion of most costs in all parochial schools.

ing a private school proposes to charge a $2,000 entrance fee over and above the $800 a year tuition. In addition, alumni of these schools are

TABLE I

PER PUPIL COSTS OF PUBLIC AND PRIVATE SCHOOLS

Expense	*Type of Schools*	*Average Per Pupil Cost for One Year*	*Costs not Included*
Total			
	8 Private Schools in Atlanta Area 1958-59	$625	Books, Transportation, and Food for 3 of these schools.
	17 Other Private Schools in 4 Southeastern States 1957-58	475	Books, Transportation, Food, Laboratory Fees, etc. for at least 10 of these schools.
	Georgia Public Schools 1958-59	265	Value of Surplus Government Food and Supplies, about $10,000,000.
	DeKalb County, Georgia Public Schools 1957-58	214	Capital Outlay, Bond Account, Building Funds, Lunch Room Account and Funds Accounted at Local School.
	Decatur Georgia Public Schools 1957-58	244	
	Atlanta Public Schools 1957-58	277	
	Fulton County, Georgia Public Schools 1957-58	328	
	United States Public Schools 1956-57	360	Unknown
Transportation			
	4 Private Schools in Atlanta Area 1958-59	125	
	Georgia Public Schools 1958-59	33	
	DeKalb County, Georgia Public Schools 1957-58	18	
	Fulton County, Georgia Public Schools 1957-58	34	
Food			
	5 Private Schools in Atlanta Area 1958-59	100	
	Georgia Public Schools 1958-59	60	Value of Surplus Food. Does include $15 cost to State and $45 cost direct to pupil.

frequently put under considerable pressure to donate money to their school.

2. Teachers' salaries are about 45 per cent of the cost in one private school and 52 per cent in another of the Atlanta private schools, which cost (total) $550 and $485 per pupil, respectively. The figure is about 75 per cent in the public schools, both state and national. Teacher-pupil ratios are around 15 to 25 in private, and 30 to 40 in Georgia schools. This shows that since the teachers' salaries in the independent schools are a smaller percentage of total costs than is the case in the public schools despite a smaller teacher-pupil ratio, this ratio does not explain the higher costs. The private schools pay about the same salaries as the public schools.

3. The public schools provide a variety of services the private schools do not. For example, special services for various groups of handicapped children are provided by the public schools. These private schools make no such provisions.

4. The independent schools serve by and large upper middle class population. Because of home backgrounds, parental attitudes, and interest in education, it takes on the average much less effort and skill on the part of schools and teachers to provide these children with an adequate education than is the case in the public schools.

5. The private schools are training mostly college-bound students; the public schools are not. Consequently the private schools offer only one program while the public schools must perforce offer several. At the secondary level this adds considerably to the costs of public schools, especially the smaller ones.

It should be noted that the costs given are averages. Some public school systems spend much more, some less. The private school costs are also averages and range from $300 to $840.

The lower cost is for an elementary school. In general private schools charge more the higher the grade. The increase in tuition from the 1st to the 9th grade is illustrated by 3 of the 8 Atlanta schools which provide both elementary and secondary education. The increase is $175, $175, and $150, respectively. Thus the average range for 12 grades would be really about $385 to $755. It should also be noted that some of these private schools have endowment funds so that tuition charges do not reflect costs. A consensus among private school principals is that $450 per pupil per year is the minimum necessary for adequate education.

The table demonstrates that it costs more to educate a child in the private schools now in existence than in the public schools. A number of things account for this fact. Among the more prominent are:

1. A state can purchase materials (such as books, supplies, equipment, and food) on a large scale and thereby effect substantial savings. Discounts are generally offered for large orders and also many of the middlemen in the standard distribution and selling scheme can be bypassed. For example, the state of Georgia provides textbooks to a public school pupil

for about $40 covering all twelve grades. These same books would have cost his parents over $200 if purchased individually.

2. Federal surplus goods and food are more readily available and used by the public schools. During the last year Georgia public schools benefited to the tune of over $10,000,000 from this variety of federal aid. A new high school in the Atlanta area recently stocked its library with books purchased from the government at 5¢ each. Public agencies often get preference in obtaining surplus goods, and many states assist public schools in getting such goods.

3. State, regional, and county (or city) costs for supervisory services are less per pupil than similar services cost the single private school. This is not only because of the much larger number of pupils per specialist but because it is thereby possible to employ better qualified personnel than an individual school could afford. Unqualified personnel are more expensive in the long run in spite of their generally lower salaries. An individual school cannot afford to employ the specialists at several dollars per pupil that the state employs for 1¢ a pupil, more or less. If comparable services are to be offered, the costly duplication implied by abandonment of a statewide system is tremendous.

4. In addition to administrative and supervisory personnel, the public school systems employ many other specialists who contribute to efficiency and quality of the educational program. There are, for example, reading specialists, counseling and testing personnel and teachers of the mentally retarded and physically handicapped children. Most of these individuals are qualified to deal with problems with which private schools currently make no attempt to deal. The few attempts the private schools do make to offer such services contribute to the greater costs noted in the table.

5. The public school system receives indirect services from other state and county public agencies. Legal advice and such varieties of services as inspection of building plans and construction for health standards are examples. Private schools must of course pay for these things.

6. The higher transportation costs for private school students shown in Table I are probably due in part to the wider geographical area served. Thus longer trips are made for fewer pupils. Transportation may well be one of the things that many schools in an all private system would have to abandon, thus creating severe problems in rural areas and for families in which both parents work and for families without cars.

Cost of a Tuition Grant System

It would be completely unrealistic to believe that the figures for non-public schools given in the table reflect what would be the costs if the public schools were to be abandoned completely. It is almost certain such a private "system" would be even more expensive, assuming again that an equivalent quality and variety of school programs are to be offered to the children. Among the factors that would tend to make the private plan more expensive are:

1. The loss of federal funds. The federal government currently contributes directly to Georgia public elementary and secondary schools about $18,000,000 excluding surplus foods. So-called federally impacted areas in Georgia, for example, have received in recent years from four to six million dollars a year. In 1957-58, around $1,200,000 was received for vocational education and $2,000,000 for vocational rehabilitation. These and other funds would be lost for the most part to a state which abandoned public education. Much of the yet-to-be appropriated or distributed National Defense Education Act funds (about $20 million for Georgia) would be lost. Actually these figures are gross understatements of total federal aid at all levels. Table II demonstrates this fact clearly.

2. It is possible that sectarian school children would also be made eligible for grants, in which case more than 16,000 children would be included at a cost of more than $4,000,000 in Georgia. It may be noted, however, that the Southeast has a lower percentage of pupils in private schools than any other region in the country. This is partly because around 90 per cent of the country's private school students are in Catholic parochial schools (less than 4 per cent are in nonsectarian schools), and there are comparatively few Catholics in the South; and partly because parents in this region are less able to afford private education.

TABLE II

FEDERAL FUNDS FOR EDUCATION—1956-1957[4]

State	*Department of Health, Education, and Welfare*	*Department of Agriculture*	*Veterans Administration*	*Total*
Georgia	$16,000,000	$11,000,000	$23,000,000	$50,000,000
Florida	12,000,000	8,000,000	22,000,000	42,000,000
Alabama	13,000,000	11,000,000	24,000,000	48,000,000
South Carolina	8,000,000	7,000,000	13,000,000	28,000,000

3. Costs of raising funds to purchase buildings and equipment and to construct new buildings would be higher. This is a point of tremendous importance. The success or failure of a tuition grant private school system will in large measure hinge upon costs of buildings and equipment.

The following facts should be considered:

a. Federal funds for new construction will be lost.
b. The current construction costs for new school buildings in Georgia (about $7.50 per square foot) are remarkably low in large measure because of expert state supervision and assistance. These state services would be lost.

4. Munse, Albert R., and Edna D. Booker, *Federal Funds for Education* (United States Department of Health, Education, and Welfare Bulletin 1959, No. 2).

c. There is already a shortage of classrooms in the state (about 3000) and population increases will call for at least 300 more each year.
d. While many of the public school buildings now in use could be sold, one wonders where the funds to purchase them will come from. The book value of the school plant in Georgia is about $500,000,000. This is not replacement cost, which would be substantially higher, probably $750,000,000. The current debt is about $200,000,000 which would have to be paid off and refinanced if the schools were sold. It should be noted that if buildings were not sold at fair market value, the ground would be laid for a taxpayer's suit.
e. It will probably cost a private group more to borrow money than it does a state or a school district. It is quite probable that in many cases private groups would find that they could not get such credit. Only if adequate existing buildings (and they are rare) are donated is this not a factor.
f. Because of rising costs of labor and materials new buildings will cost more in the future.
g. The costs (e.g., legal) of selling the public school plant and equipment would be substantial.
h. Not all school buildings, land, and equipment can be sold. In some cases there are reversion clauses; e.g., where the land was donated to the school with the proviso that it be used for public education. In such cases it may be that it would revert to the donor or his estate, if the school were put up for sale. In short, it would be a lawyers' heyday for many years to come.
i. In Georgia the State School Building Authority owns most of the new, safe schools. In the opinion of some competent authorities, the agency's statute, and its contractual agreements would prohibit the sale of these schools.
j. Buildings not designed for use as fulltime public schools are not only unsuitable but more expensive to run. DeKalb County recently was forced to use some church school buildings while new schools were being constructed. The superintendent reports that maintenance costs were double those in the regular buildings and insurance costs were four times as large.

4. The experiences of Little Rock and Norfolk demonstrate that even though most children are in some sort of school (15 per cent of the Little Rock children are not), new business is reluctant to move in and prosperity suffers. A survey by the American Association of University Women in Little Rock found only six firms reporting improved earnings after school closing. Two of these were moving companies. In the long run the loss of tax revenue would be substantial, and it would be much more difficult for the state to pay tuition grants and for the citizens to pay the taxes. The cost then to the individual tax payer would go up.

5. Next to capital plant and equipment the most difficult problem fac-

ing a private system would be to supply the special services to students now offered by the states and the large city systems. It is true that these offerings are inadequate, but the states are rapidly moving to improve the situation. Probably a private system would have to abandon any thought of such services. Among those offered by Georgia the following may be noted (this is an incomplete list, ignoring many fine and valuable services):

a. Special education for atypical children. It is estimated that over 130,000 Georgia school children need special services (e.g., speech correction, 47,000; emotionally disturbed, 28,000; gifted and mentally retarded, 18,000 each; deaf, 1,000; blind, 2,000; etc.). Currently only about 6,200 are receiving such services but the number is going up and the state department is planning for them all; e.g., a bright-children project has just been started.

   It should be noted that although total figures are high, the number in any one category is small and therefore only in very large schools or school systems can services specific to the needs of such children be met without state help. Who can afford certified speech correctionists, for example, for a few scattered individuals? On present averages, it would take a school population of over 24,000 children to fill one classroom (30 pupils) at one grade level with children needing speech correction, and three times that many to provide classes of gifted children. Note also that such children as a rule need to be in smaller groups if this special education is to serve its purpose. Obviously the special schools for the blind and the deaf would have to be abandoned as would the trade and vocational schools in existence and those planned.

b. In addition to its textbook program the state of Georgia has a staff of trained librarians which gives advice and assistance on the organization and administration of school and public libraries, selection and use of library materials, the planning of buildings and library quarters, and other services. The demand for these services exceeds supply. The state provides financial support in a variety of ways to the library programs of local areas. In 1958 the federal government supplied $150,000 for the improvement and extension of rural library service. To lose these and many other library services and financial supports would be a step backward.

c. The vocational education program in Georgia includes vocational agriculture, homemaking education, trade and industrial education, distributive education, and business education. About 90,000 secondary school students and 110,000 adults (including veterans) are served by this program for about $9,000,000, of which the federal government has supplied $2,000,000. It is extremely unlikely that any private school system could, especially without federal aid, con-

tinue this program. Rural areas would be the ones to suffer most from this loss.

d. Other special programs that could not survive a switch to a tuition grant system include the adult education program, the specially trained science supervisors, visiting teachers, the state and federal financing of graduate education in subject matter for public school teachers, the in-service teacher education program, and the Teacher Recruitment Service.

e. As a final example one may note the very important guidance, counseling, and testing program recently greatly expanded. This is one of the areas where federal funds authorized by the National Defense Education Act will be substantial. It is generally agreed among those concerned with the improvement of American education that services in this area are one of the most pressing needs. In his recent survey of American high schools Conant made this one of his major recommendations. Only the most expensive private schools could afford such services. Also, it should be noted that competent counselors are in very short supply. The federal support for training counselors is specifically only for those currently employed in public schools.

6. It is highly probable that if a large number of private schools is established, and a tuition grant system inaugurated, the general level of legal and supervisory control of expenditures will deteriorate. Undoubtedly funds will be spent less efficiently, will be more frequently misused, if not stolen, by unscrupulous parents and school personnel. For it is naive to assume that the fine private schools of high standards and integrity—such as we are familiar with at present—will be typical of the schools which would proliferate in a time of mass private education. The opportunists ever ready to bilk the naive, the gullible, and the untrained person will find fat pickings. Many parents, not seriously concerned with education or badly pressed financially, will find ways to use the money for other purposes. The legal specter of "state action" will probably prevent adequate legal safeguards being enacted against this misuse of the taxpayers' money.

7. Finally it may be noted that during the change-over many teachers will leave the state. The recent dismissals in Little Rock will not make teachers very confident in the security of their jobs. Higher salaries and better working conditions in other regions of the country will lure many away. To replace them with equally competent teachers will require, in this day of rising salaries, higher pay than currently offered.

All in all one cannot help but conclude: if a tuition grant system replaces a public system, the cost of education will be increased by a tremendous amount (at least $200 per pupil a year and perhaps as much as $400). At present school budgets thousands of children would have to do without education. All but a few would get markedly inferior education.

III. Further Practical Difficulties

UNFORTUNATELY THE financial difficulties the tuition grant proposal creates are only the beginning of the tale. Many other important practical obstacles exist. Among the more serious are:

1. The deterioration of quality inherent in a private system over and above that caused by financial pressures. Contrary to popular opinion, the public schools even now are doing a better job, on the average, than the private schools. Take the matter of college preparation, the task for which private schools are often considered to be uniquely competent. A number of published research studies show that when intelligence is taken into account, the graduates of private schools do *not* do as well in college as do the graduates of public schools.

In a study at Princeton, for example, public school graduates were matched with private school graduates in academic aptitude. The grades earned by the public school graduates were clearly better than those earned by the private school graduates during both their freshman and sophomore years.[5] Studies at other universities have obtained similar results.

The need to control standards has been apparent to citizens in every state of the Union. There are laws in all states about the qualifications of teachers, courses of study, and many other matters. In many states there are minimum expenditures per pupil. These laws could not apply to the schools of a state with only private schools. Because of financial and other pressures, many of these private schools will let standards slip below the minimum now maintained by law. Without competition from public schools this is almost inevitable.

2. An important aspect of quality of schooling is the variety of programs offered. Since children are not alike, variety is a necessity. Private schools typically offer a single program suited to the needs of some children. As long as they enroll only such children they can make a valuable contribution. As the matter now stands parents can (and a majority of those who could afford private schooling for their children, do) send their children to public schools if the private schools available are not suitable.

The private schools currently operating in Little Rock illustrate this unfortunate consequence. Raney, the largest of the five high schools set up after the public schools were closed, offers no foreign languages, no general mathematics, no music, no art, and no vocational courses other than typing and shorthand. The school offers less than one-fourth of the courses Central High used to schedule. The other schools do no better. Lack of suitable schools has undoubtedly contributed to the fact that almost one sixth of the students formerly enrolled in Little Rock high schools are receiving no schooling whatsoever.

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5. J. Davis and N. Frederiksen, "Public and Private School Graduates in College," *Journal of Teacher Education*, 1955, 6, 18-22.

3. Also related to quality is the matter of accreditation. The existence of state, regional, and national accrediting agencies is further demonstration of the need to control standards. Unfortunately, accreditation is not easily obtained. In the first place it takes time, generally a year or more. What will happen to the students seeking college admission during this interval? What will happen to the students who need diplomas from accredited schools for their jobs? Secondly, accreditation fees are charged by the accrediting agencies. Who will pay? Thirdly, to be accredited a school must have good libraries and laboratories, and adequate buildings and equipment. The difficulty of obtaining these things has already been emphasized.

Finally and undoubtedly most important, the schools must have sufficient numbers of qualified teachers to offer programs suited to the needs of their pupils. There is little recognition or acceptance of the idea of professional qualifications in some nonpublic schools. In many cases the system of volunteers and the service-at-cost idea seem to be the rule. In recent years many of the very best private schools have been making serious efforts to get their teachers certified. Nevertheless they are behind the public schools in this respect.

If any large number of private schools were formed most of them would fail to meet the standards necessary for accreditation. In fact they would often fail, as many of them now do, to meet even the standards of being fire-resistant, functional, efficient, and safe. The public schools enjoy the protection of persons qualified to supervise these aspects of the program, whereas the private schools need meet only minimum qualifications in order to operate at full capacity.

If some private schools already in existence fail to meet the standards of public schools, what can be expected of the hundreds of schools hurriedly created to replace the public schools?

4. Another difficulty concerns where responsibility regarding school policies will lie. The opportunity for individuals and small groups to impose their ideas on the children of others will increase. The protection now provided by state law will be lost. It is not pleasant to contemplate the manner in which various groups will try to get these private schools to indoctrinate children with their own particular brand of religious, political, social, and economic beliefs. Education may well become a divisive element in our society instead of the unifying element it has been in the past. In contrast to the present situation parents will have no recourse if or when school policies are objectionable or harmful.

The extent to which political or non-educational agencies legally may assume control over expenditures for schools, in the event of conversion to private schools, is a subject worthy of much serious thought. The control of the finances of an organization, once achieved, normally carries with it the power to control the policies of that organization.

As a means of gaining power, control of education has no peer. Because

of its inherent potentialities, a constant struggle may be expected between those who would use the schools for the improvement of mankind and those who would use them to enhance the power and the status of particular persons and groups.

Pressures will be brought to bear upon legislators by powerful interests seeking to win special concessions in school charters. Once a charter is granted, a contract exists. As such, it is protected under Article 1, section 10, of the Constitution of the United States.

The public schools, on the other hand, are safeguarded insofar as possible by built-in protections against partisan control and political influence. The public schools are protected against raids on school funds. Precautions contained in rules and regulations, and followed carefully in most instances, insure maximum return from the tax dollar.

In public systems a department or a committee of finance has the responsibility for the preparation of the school budget. Studies are made to determine the amount of funds needed to conduct the kind of school program wanted for the next full fiscal year. These studies, undertaken by responsible finance committees or departments, normally include the preliminary estimates of receipts and disbursements. A tentative school budget is then prepared and presented to the chief executive officer of the schools for further study and revision. These budgets are prepared by professionals able to devote their full attention to such important tasks, instead of by often sincere but generally unqualified men in their spare time.

The procedures for adopting budgets of public school systems permit boards of education to study the proposed budget before adoption. The recommended procedure for the preparation and approval of a school budget allows little opportunity for embezzlement. The temptation millions of dollars of unsupervised tuition grant money will create will surely be too great for many weak and greedy men.

School budgets in tax supported districts are adopted for the fiscal year of the school system. Incoming revenue is certain. No handouts or subscriptions are needed. The school board determines carefully and accurately the amount of funds required from local taxes. A millage rate necessary to balance the budget is recommended to the tax-assessing board. Local taxes are collected on a calendar year basis, not gathered when treasuries are depleted and budgets unbalanced.

In public school systems the procedures for preparing and adopting a school budget by boards of education have been carefully worked out and comply with legal safeguards. Official records are kept on a current basis and are open to the public for inspection. In a private system this protection cannot exist.

Committees on education of grand juries in some states have been in the habit of conferring with superintendents of public school systems and of visiting some public schools. The presentments on education have been useful in calling attention to strengths and weaknesses in the public schools.

In contrast an all-private system would have no such inspection. It could be many years before a sufficient number of citizens became enough aware of the probable inadequacies of the system to do anything about them. Education is a public affair and should be subject to public inspection and control.

5. One assumption of the proponents of private school plans is that a city, county, or state could abolish its public schools and contain the repercussions within the boundaries of that district. It is said that it may take years before the inevitable taxpayers' suits spread school closings beyond these districts and so only a few people somewhere else will have to worry. This assumption overlooks the fact that the operation of schools in adjoining districts would suffer as well.

The Little Rock high schools enrolled just under 3,700 pupils. Of these 27 per cent are in public high schools in Arkansas and 10 per cent in schools out of the state. Probably only a few schools feel this burden. However, imagine the chaos if equal proportions of Atlanta's 100,000 school children descend on other school systems. The carefully laid plans of many school systems would be wrecked by the thousands sent to live with friends and relatives in other areas. No district can be smugly confident that it will not be affected, dreaming that something may happen to make the nightmare go away in the meantime.

6. Another problem is that none of the professional help of state departments of education now available to public schools could be called upon to help untangle problems of school organization in the private schools. Depending upon trial and error to solve the multitude of problems confronting private schools is a poor substitute for the professional knowledge and guidance of seasoned staff members of such departments of education.

7. School closing obviously entails curtailment of educational opportunities. The South is the region least able to afford this. The problem of adult illiteracy is greatest in the South.[6] Even with the system of public schools—admittedly inadequate in some areas—such illiteracy ranges from 14 per cent in Florida to a high of 29 per cent in Louisiana. As measured by the performance of high-school seniors on the General Educational Development tests, the level of educational outcome of the public schools is directly related to the level of educational input. This is measured in terms of financial support for public education and the value placed upon education as reflected by the educational status of the adult population.[7] As we have shown, private schools will mean *more* totally uneducated, and more only half educated people.

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6. "Our Illiterates," *Newsweek*, March 30, 1959, pp. 67-68.

7. *Does Better Education Cost More?* Washington, D. C., National Education Association, 1959, pp. 20-21.

IV. Some Legal Facts and Assumptions

IN THIS SECTION answers to the following questions are discussed:

1. What did the United States Supreme Court say in the *Brown* decision and subsequent cases?
2. How do the courts connect "state action" with private schools?
3. Does vague language in laws endanger educational opportunity?
4. What laws have states enacted to tamper with the public school system?
5. Is is possible that sectarian schools will get direct tax support?
6. What are the dangers that relations between the federal government and the states will be impaired?
7. Can money actually be paid out legally to aid private schools?

THE BROWN DECISION

There may be "local option" on the timing and pace of desegregation; there can be none on the constitutionality of governmentally compelled segregation in the schools. The matter has been finally settled by the tribunal empowered under the Constitution to decide it. There can be no permanent forestalling of desegregation in view of existing decisions. In Virginia, leaders have stated openly that they are now compelled to recognize the existence of the 1954 segregation decision and the overwhelming power of the federal government to carry out federal court decrees. Last January, 1959, the most important of Virginia's massive resistance laws were declared null and void by federal and state courts.

The plain truth of the matter is that the broad decision of the Supreme Court in the *Segregation Cases* applies equally, without ambiguity, to all 50 states even though only four states plus the District of Columbia were original parties to the suits.

In the southland, citizens are faced with a "large and awkward chunk of reality" because the *Brown* decision is clear. The federal courts have the power to enforce the school decisions against local authorities by enjoining them from operating segregated public schools. Will state leaders be able to "come up with something new" to support *private* education which the Supreme Court has never heard of? One must question seriously the chances of any state government coming out better than second best in legal skirmishes with the nine justices of the nation's highest tribunal. All ingenious tricks of evasion are being slowly eliminated from consideration as long-term honest answers. The school cases of Virginia and Arkansas have closed doors on most plans in other southern states. Based on precedents now being established, other cases will be decided rapidly and decisively. Decrees of federal courts have in effect, amended and will amend state constitutions.

No one should believe he can escape the ruling of the Supreme Court

regarding school segregation by sending his children to a school which is supported, directly or indirectly, by tax funds. Regardless of the label attached thereto, that school will be declared a public school by the courts. Evasion is strictly against the law. Governmental measures designed to evade the conclusions of the courts will be struck down as unconstitutional. All the states can do, legally and properly, is to attempt to avoid the consequences of desegregation by ridding themselves of legal responsibility for the administration of schools.

State Action

The legal concept of "state action" is the area in which plans to establish private schools will be tested. This is so since the plans involve either minimum participation by the state or extensive state control. What is the "state action" concept? How does it relate to tuition-grant plans of the state?

In actions brought against a state by persons alleging discrimination, the action complained of must be action of a state agency at some level of government.[8] The prohibitions of the Fourteenth Amendment are solely against the laws of the states, and the actions of state officials done under state authority.

Only state action of this special character is prohibited under the Fourteenth Amendment. Under its provisions, state action does not include the acts of private persons. Invasion by individuals of rights guaranteed to individuals is beyond the scope of the Amendment.

The *Brown* decision of the United States Supreme Court in 1954 declared that state action in carrying out a segregated public school system was a flat denial of the equal protection of the laws. More recently, the courts have spoken out with eloquence on the precise meaning of the "equal protection" clause. *A state cannot be responsible for a public system of schools in some of its counties or districts and rid itself of such responsibility in other counties.* This was the meaning of the January ruling of the federal courts in Virginia, and of the June, 1959 ruling in Arkansas; schools could not be provided for children in the rest of the state when they were closed in Norfolk, Charottesville and Front Royal, or in Little Rock.[9] The "protection" clause means quite plainly that no state may enforce legislation or rules and regulations that discriminate in favor of one class of citizens. The United States Supreme Court made this patently clear in 1958 when it stated, in the Little Rock case:

> State support of segregated schools through any arrangement, management, funds or property cannot be squared with the Amendment's [Fourteenth] command that no state shall deny

8. *Civil Rights Cases*, 109 U.S. 3 (1883).
9. *James* v. *Almond*, U.S.D.C., E.D., Virginia, Civil Action No. 2843 (1959).

to any person within its jurisdiction the equal protection of the laws.[10]

State action includes acts of executive officers. It is within possibility that the Supreme Court could, by means of a federal court injunction, restrain an executive in a state from enforcing a state school statute held to be unconstitutional. A federal judge could fine and commit for contempt the attorney general of the state upon his refusal to obey such injunction.[11]

State action includes acts of members of the state judiciary. Almost a century ago the Supreme Court applied the principle that acts of a state judge constitute state action.[12]

The concept includes the action of private organizations that perform "quasi" functions of government. To put it differently, private groups are subject to restraints of the constitution when "they perform functions of a governmental character in matters of great public interest." What state action means in terms of private persons becomes clear by these recent Supreme Court words:

> When authority derives in part from Government's thumb on the scales, the exercise of that power by private persons becomes clearly akin, in some respects, to its exercise by Government itself.[13]

State action encompasses private action when state statutes impose a command to act. If a driver of a bus requires a Negro passenger to change seats in accordance with state laws, he is enforcing state law and thereby engaging in state action. State action includes valid laws which are improperly enforced. A southern state can pass laws (e.g. a pupil placement law) which seem to be valid on their face but which are discriminatory against Negroes in their enforcement. If Negroes are denied state funds for education, such denial constitutes state action. State action includes acts of officers of a state which are contrary to state law.

The legality of state abandonment of public schools and transfer plans will depend upon how the courts view the methods by which the private schools are created and the measure of control by the state over such schools. If the private school plans of the South involve aid beyond uncontrolled grants to individuals or private corporations such aid will be sufficient to label the operation of the school state action.

It is possible that those states which have repealed their requirements that the state furnish education may avoid for a time the impact of the decision in the *School Segregation Cases.* They may—if there is complete relinquishment of all state support for public education.[14]

The legality of the tuition-grant idea and of proposals to close particular

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10. *Cooper* v. *Aaron,* 358 U.S. 1 (1958).
11. Based upon *Ex parte Young,* 209 U.S. 123 (1907).
12. *Ex parte Virginia,* 100 U.S. 339 (1880).
13. *Communications Assn.* v. *Douds,* 339 U.S. 382 (1950).
14. Robert McKay, "With All Deliberate Speed," 31 *New York University Law Review,* 991, 1043 (1956).

schools is open to serious question. It can be assumed that under certain conditions these plans would stand up in court. The conditions referred to involve avoidance of "state action." All or almost all of the following elements must be totally missing in schemes for private schools if they are to be legal:

(1) compulsory attendance laws;
(2) state control of how grants are spent;
(3) state supervision of facilities, curricula, and personnel;
(4) requirements for accreditation;
(5) special services from the state;
(6) state assistance by means of textbooks, supplies and equipment.

Local school operation is constantly subjected to state supervision and also much affected by federal policy.[15] It is already within the power of states to regulate private schools by inspecting, supervising, and examining them, their teachers, and their pupils. States can require that children of proper age attend some school. States legislate for the safety of their immature children in matters of morals, health, and welfare. They prescribe regulations as to buildings, financial resources, safety appliances, height of commodes, and length of school terms. They can enforce minimum scholastic standards for pupils and for teachers.

This supervision now exists alongside that of all public schools. But in a situation where all schools are "private," such state supervision would be definitely state action.

Tuition grants for attendance of children in private schools can be valid only if made to the individual pupil without any state regulation or shred of control. The private school must exist without any trace or evidence of state, county, or municipal control, and be directly supported by no public tax funds. Perhaps the courts would find that grants actually serve a "public purpose," and that they constitute state action in support of segregated education.

The courts have held that the maintenance of some system of *public* schools is identified with the exercise of the police power of the state. If called upon, the United States Supreme Court will certainly find many state court precedents to the effect that education is an almost indispensable function of government. Perhaps education is not a service of government but is actually part of the act of governing itself. In 1954 the Supreme Court stated that education was the very basis of state and federal citizenship. Free schooling was termed a duty imposed upon individuals for the public good. In short, the courts may not permit a state to abandon its public schools.

Education IS an essential service of the state. It cannot be "given" away. The partially tax-type private school, now operating[16] and those to

15. Roald Campbell, "Folklore of School Control," 67 *The School Review*, 5 (1959).

16. There are several military academies in the South, as well as the parochial schools of Louisiana, which now receive financial assistance from the states for operating expenses.

be established, are subject to challenge as instrumentalities of the state under the concept of state action developed above. Court decisions have clearly established that performance by private parties of a function of government makes the private parties a vehicle of the state. The private school could thus be attacked on the theory of performance of a function of government, without raising the question of financial aid.

Legislatures of some states have considered laws providing for the exclusion of colored pupils from state-subsidized private schools.[17] Such measures of state action would warrant the application of the Fourteenth Amendment, should a plaintiff so charge in his petition in federal court. The enforcement by a *state* court, or the sanction by the state of discrimination in a private school, may possibly be attacked directly as being state action under present constitutional law.[18]

There can be no pat answers regarding the problem of providing private school education. Those state and local school officials who predict the legality of such a venture must analyze the methods whereby the state exerts its sovereign power, if private schools are adopted as the means of circumventing the segregation decision.

The United States Supreme Court did not—for it cannot, now at least—forbid segregation carried out by private or voluntary actions. What the Court did and continues to forbid is the use of "any arm of government" to enforce or to promote segregation of the races. All that is needed, however, is to have some southern state officer inflict the injury that will then permit the federal courts to apply the law. There would be a showing of state action upon which to invoke the provisions contained in the Fourteenth and Fifteenth Amendments. As one writer put it:

> In short, it may well be that the stigma of state action can only be avoided by a state which is willing to forego education for the general body of its citizens altogether—that is, neither operating schools itself nor offering tuition assistance to students for use in private schools practicing segregation.[19]

Statutory Construction

The vagueness of the statutory language of provisions for nonpublic schools could cause long and perhaps critical delay in providing even a skeletal system of education in some states, were public schools to be aban-

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17. As long as private schools are not controlled by any arm of government, their voluntary admission policies are not subject now to court scrutiny.

18. A principal case is *Shelley* v. *Kraemer*, 334, U.S. 1 (1948), dealing with restrictive covenants.
Of course, cases decided by the courts relating to housing covenants or elections or labor unions are not directly applicable to the precise problem of state action and tax supported private schools. These cases did not, of course, deal with school attendance. The point is made that the precedents do supply clues to the law as seen by the courts. The decided cases do illustrate the ways in which courts have analyzed the matter of whether state action is involved in a situation where private citizens (or corporations) have performed some alleged racial discrimination. None of the cases lays down a single, crystal-clear test enabling one to predict the result in a hypothetical case.

19. McKay, 31 *New York University Law Review*, 991, 1082-1083 (1956).

doned. Courts would then be called upon to interpret intent and direction and determine whether state action is involved in any of the state's plans. If you were a judge, how would you interpret this language:

> . . . consistent with its available resources and the willingness and ability of the individual student . . .

If public schools were to close, such wording could tie up provisions for any schools for a long time. The Courts would have trouble knowing the intent of legislators.

Provisions of State Law

Constitutions of southern states prohibit the spending of state funds for mixed schools. Appropriations acts before and since 1954 have provided that all public funds would be withdrawn from any school system, sometimes including university systems, if operated with white and colored students in the same classrooms.

In Georgia the amendment of Art. 8, sec. 13, paragraph 1 of the state Constitution struck the educational guarantee from the supreme law of that state. The amendment reads:

> Notwithstanding any other provision of this constitution, the general assembly may by law provide for grants of State, county or municipal funds to citizens of the State for educational purposes, in discharge of all obligations of the State to provide adequate education for its citizens.

This amendment authorizes the General Assembly of that state to abolish schools statewide. It authorizes the state to empower local school districts to abolish their schools. The legislature is able to make funds available directly to children to attend schools of their choice, private or otherwise. The state may sell or lease existing school buildings to private groups for the operation of private institutions; however, in Little Rock such leasing was voided by the federal court.

In other words, the law-making body of Georgia now has the power virtually to destroy the public schools and the university system by repealing all statutory laws under which these systems operate.

Issue of Sectarianism

The constitutions of most of the 50 states provide that neither tax funds nor the income from permanent school funds may be used for the support of sectarian or denominational schools. Such provisions are in accord with the intent of the First Amendment to the federal Constitution.

Where the constitution requires the school fund or the public fund for educational purposes to be applied exclusively to the public or common schools, a statute providing for the payment of any part thereof to a sectarian school is void.[20] Changes in the basic law of southern states

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20. *Corpus Juris Secundum*, Vol. 78, p. 611.

have taken account of this fact. In Georgia the "private school amendment" provided that appropriations to churches and sects are forbidden. No state money can be taken from the public treasury—directly or indirectly—to aid any church or sect or denomination.

Should schools be closed, educational grants from state and local funds cannot be spent for religious education. Anyone doing so may be guilty of breaking state law. Public money cannot be spent by the state and its political subdivisions for sectarian, or any other but public, purposes.

Some lawyers, it may be noted, believe that the southern states will have to make tuition payments to sectarian school students, *if* the tuition-grant system is to work. Their reasoning is interesting: by refusing grants for sectarian schools, the states would be requiring the operation of the schools according to public educational policies; instead of the grant being to the *child*, it would be clearly seen to be a grant to the *school*: not a "child benefit" because some children would be discriminated against and denied the "benefit."

Federal-State Relationships

The spread of educational functions among more than a score of federal agencies—most of which do not have the word "education" in their name—helps the public preserve the idea that the federal government does not interfere with the rights of states and local communities to control the great public school system.[21] The federal government does interfere greatly. If control over education is surrendered by inaction of some southern states, there is a danger of broadening and deepening control over education by the federal government, at the direct expense of state. If some states were to abandon public education, there is a real possibility that the federal government would take over the function within those states.

The first school decision of the Supreme Court in 1954 touched deeply upon the relationships between the federal government and the states. In the first 136 years of the life of the United States Supreme Court, eighteen decisions were handed down that had direct bearing on education. From 1926 through 1954—a period of less than thirty years—twenty-seven decisions affecting education were made. The Court continues increasingly to affect educational policy and practice in all fifty states.

Financial Support

The private school supporters count heavily on state tuition grants as a partial answer to cost problems. In thinking about alternatives to public support for education, it is assumed that schools thus established would

21. Campbell, *The School Review*, 8 (1959).

receive state aid but no grants from the federal government.[22]

One should not be duped by language which tends merely to give a false sense of security. Such is the following comment made recently by a southern learder:

> With reasonable financial and educational safeguards the parents would be paid their child's share of the county school operating fund to assist him in securing an education. . . .[23]

It is true that, where state constitutions and statutes permit, decisions of the United States Supreme Court have held that funds may be used for certain services for children. The theory applied by the courts is one called the "child benefit theory." The answer as to whether state tax funds may legally be used for such services to children attending private schools depends on interpretations of the legal provisions of the several states. This is a murky field of law; the least that can be said is that using local or state or federal tax funds for the support of private schools in any of the 50 states is courting real trouble.

22. John S. Battle, Jr., city attorney of Charlottesville, Virginia (in a speech in April, 1959) said that "anyone who elects to accept the tuition grants should understand the consequences." One is that such a scholarship program would mean substantial additional annual cost to all concerned.

23. Ralph E. Odum, Assistant Attorney General of Florida, in a speech to the Independent Bankers of Florida in Tampa, February, 1959.

V. Problems of Public School Re-openings

PUBLIC SCHOOL re-opening presents a host of practical concerns as well as problems more intangible in nature. Serious deterioration of the idle school plants remaining (those which could not be or were not sold) would be a certainty. There would be economic waste due to the attrition of the student body during the period of "no-schools" and consequent small numbers of pupils enrolling in school plants which were designed to house much larger enrollments. It is costly to maintain and operate partially used facilities.

On school re-opening the reduced ADA (average daily attendance) would necessitate a reorganization of school departments at both local and state levels. In terms of former standards, there would surely be a curtailment of vital state services.

School districts would have suffered financial setbacks. There will have been losses of revenue to the local districts because the formulae for state aid are figured on the basis of ADA. Financing the school-year after re-opening presents many problems. There will be difficulties stemming from attempts to get a huge and complex machinery into even partial operation. How will a board meet the operating and capital outlay bills for a school year ahead with no assurance of state or federal help, because this help is based on the statistics of the preceding school year—and there was none? Such a matter might well decide whether any schools could actually get under way after being shut down.

The loss of qualified personnel to other states and to other occupations would present a staggering problem. Courses of study would have to be organized on the basis of those available for teaching rather than on what a community wants or the interests of the pupils. Teachers' contracts for the school year have to be prepared in advance and go out to prospective employees in the spring before the opening of schools. How many of the former teachers would be in a position to return to their desks even if they desired to do so?

In summary, for public schools to be opened again, the public boards of education would have to be re-constituted or reorganized. Superintendents would need to be chosen or elected. The machinery for the business administration of schools would have to be set in motion. Child accounting procedures would have to be undertaken. Compulsory education laws would require revitalization. School financing would need to be agreed upon. Pupil personnel services would have to be anticipated. Salary schedules would need to be prepared and schedules agreed upon by board and representatives of teachers' groups.

The school census would need to be brought up to date. The school law in the legal code of the state would have to be reactivated and altered to meet new conditions. The school plant would have to be put in working

order. Teacher personnel problems, such as contracts, welfare provisions, and teaching loads, already difficult, would require much attention. Transportation routes would have to be re-established and the old buses tuned up.

Intangible Problems

How does one measure the reduced support for the system of public schools due to increased enrollments of children in private schools? Parents and public school officials would have to deal with increased pressure upon families by the newly established private schools, anxious to have pupils continue their private schooling in partially subsidized church and other private facilities.

The reduced interest in schools on the part of parents and lay groups must be reckoned with. A closed school cannot serve as a focal point of interest for community activity. Habit systems built up by children who attended school haphazardly militate against regular school attendance. Attitudes of "anything goes" are inimical to desires of high quality performance in schools.

A damage resulting from closed schools, and one which will prevent solid support for re-opened schools, is the lack of interest in public education of groups of parents who can afford and are willing to continue to support quality programs in private schools. The closing of schools would deal blows to experimental programs in selected public schools which might not be resumed in the schools opened again after the unworkable private plans were discarded.

VI. Some Conclusions

THIS STUDY HAS CAST doubts upon proposals by which some southern states now contemplate total and permanent segregation of the races through the device of private schools. Raising these doubts does not, of course, prevent adoption of private school plans by those states as calculated risks or as delay techniques for the postponement of "that awful day." The value of postponement, however, must be weighed against the possibility of subjecting the management of schools in some communities and entire states to legal harassment and suits. There is the real possibility of considerable court supervision of school operation, a prospect which must be looked upon with distaste.

There are southerners who sincerely believe that the solution to the "school problem" is to have public officials persuade the National Association for the Advancement of Colored People to dismiss instigated suits. Only this, it is alleged, will save the public schools. Their assumption is that trouble brews only in metropolitan centers, that tensions over race and education are confined to these geographical areas and that dismissal of a few suits in the cities will keep the social customs of the South intact. The facts indicate that these hopes cannot be sustained, either on the score of NAACP withdrawal, or the confinement of litigation and its outcome to the cities.

In considering plans for state abandonment of public schools, many problems have been examined. One concerned the meaning and effect of the language of the opinion in the *School Segregation Cases.* Another was the concept of what is "state action" under the Fourteenth Amendment. A third problem involved the sale, lease, or donation of public property to private interests. There was the matter of whether the appropriation of state funds is for a "public purpose." This included the problem of separation of church and state.

Facts were assembled. Of course, these gave no final answers to problems. There are seldom final answers to any complex situation. There are enough facts available, however, to provide better answers to the public-private school issue than can be obtained through hearsay and guesses off the tops of heads.

The tuition-plan is but one of several subterfuges advocated by people overcome with fear who do not care or dare to meet this important issue on the basis of judgment and logic. But the facts demonstrate that a system of private schools, in a mixed society such as exists in much of the South, is unworkable, legally, socially, and economically.

An important consideration is whether in providing tax funds for services to children attending private schools, dangerous precedents may not be established. It may lead to state support of sectarian institutions. Once the basic premise is accepted, it may result in state subsidy of many other activities now regarded as private functions.

Another problem may be considered. It is the uncertainty in the thinking of the layman and the educator as to what constitutes good education, public or private. The question of what is quality education must be faced since most people want to improve the quality of education in the United States. Persons disagree vigorously as to the nature of good education, and whether private schools achieve it and whether public schools can ever achieve it, given their unselected masses of students.

Perhaps people have to be free to make their own definitions of what is quality in education. It can be defined in a number of ways. It can be defined as excellence of teaching personnel, adequate facilities, and amount of schooling provided. It may be defined as high scores on achievement tests. Some assert that quality is attained when emphasis is put upon fundamental objectives and sound learning procedures. To get quality education in public or in private schools, people must not only want it in general. Vague and abstract aspirations will be as unsatisfying as trying to catch a spoonful of smoke.

One thing is certain, however. There is a high degree of correspondence between the level of expenditure for schools and such factors as literacy and years of school attendance beyond the elementary grades. To whatever extent the abandonment of public schools will lower a community's total expenditures on education, or will result in less schooling for dollars spent, we may expect literacy and years of school attendance to decline. In the South, the realization of quality education is steadily being encouraged by more economic and efficient operation of schools, comprehensive instructional programs, curricula suited to varying abilities, and vocational aid. The growing success of our public schools can be measured by the increasing attendance of their graduates at colleges, and by other criteria.

The facts and figures presented suggest that there are no quick, easy, and simple answers to the question: What would we have to spend to obtain similarly high-quality private education? The facts, however, do shed considerable light on the question. The evidence is a far better basis for answering the question than sheer guesswork. The available data suggest that expenditures per pupil would be at least double the amounts now spent by public schools and might easily be triple the amounts.

Much is implied by the question, "Do we want private schools instead of public schools?" The time has about run out in which to find the answer. Evasion is almost come to an end. The strategy of "massive resistance" is being put to its final tests. No double-talk can alter what is now clear—that public schools can be maintained in the South as the base of our school system only when there is compliance with federal law. The sooner it is recognized that this is so, the sooner will our people and our society pass the crisis point and be able to get down to the business of education for all, in public schools with an option of sending our children to private schools if this is desired.

Substituting private for public education may have an heroic appeal for many in a time of trouble. Upon sober reflection the substitution scarcely seems prudent. The days ahead will be ones of testing and trial and much error. All plans proposed to supplement the public school system or to be an alternative to it must of necessity encounter administrative and legal difficulties in the years to come. Perhaps none of these is insurmountable. Whatever heroic challenge may exist must not be permitted to blind us to the remembrance that the education of the young involves far more than a present public service. It involves the whole shape of the future and the basic issues of life.

VII. Addendum: Some Questions of Principle

UNDERLYING THE WHOLE previous discussion there have been certain values and premises—moral, political and educational—which the authors hold. It is time to make these explicit.

In general terms we in the United States have believed that public schools have a special and a necessary contribution to make to the development of a "way of life" termed American. Accordingly, provisions have been made for public schools, supported by tax funds, and available to all who could profit from schooling. The organization of school systems and the operation of individual schools have been designed to serve the educational interests of all children.

This section of the paper elaborates such ideas and identifies some principles. These are stated here as a reminder of much that Americans have claimed they have stood for. If you, the reader, do not accept the implications of the principles, then it must follow that your appraisal of the problems posed by shifting from a public to a private school base will be different from that which has been set forth.

JUSTICE

A first principle is this: In a democracy there are no superior persons due to class or ethnic distinctions. To put it positively, fair dealing and upon even terms, without distinction of persons, is basic. The doctrine applies equally to all people. Any statement of purposes of education which is acceptable should be said in language consistent with this idea: that education exists in organized form to aid people to approach the democratic ideal.

Opening doors year in and year out to the children of each neighborhood, the public schools have required only that residence of the moment be established. The public schools, accepting one and all, have been the "greatest single force in building whatever sense of oneness, of togetherness, we have achieved." [24] It was Justice Frankfurter in the celebrated *McCullom* case who said that the public schools are symbols of secular unity. They were designed to serve as perhaps "the most powerful agency for promoting cohesion among a heterogeneous democratic people." [25]

In our tuition-free systems of public education—for there are literally hundreds of different systems—class distinctions are deemphasized markedly. The growth and development and legal sanction given to private schools can serve only to strengthen class divergence. In the private school, citizens possess an instrument which has been used and can now

24. Gordon Hullfish, "Educating for Democracy," *AAUP Bulletin* (1955) Vol. 41, p. 254.
25. *McCullom* v. *Board of Education*, 333 U.S. 203, 216 (1948).

be used neighborhood by neighborhood to weaken the common heritage.

Note the following language of the United States Supreme Court some six years after *McCullom*:

> Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment.[26]

The public schools have created a national unity, have helped to adjust new-comers to the American pattern of living, and have taught the equality of man rather than the value of privilege and status based upon social ranks. The public school program, along with private schools, has been a significant factor in making the concept of self-government work. Public schools made an enlightened citizenry an actuality. The children of America, regardless of where their parents happen to live, should not have to forego the great American right to a *public* education, behind which has stood all the judicial and financial support of a great democracy.

In the most enlightened states, public education now falls short of these goals. Increased effort should be made to widen opportunities, not to restrict them. The value gained over decades from the establishment of free schools will be lost if attendance at school shifts to a voluntary basis. Educational opportunity at public expense must continue to be available to all pupils who can profit from it in public schools. Systems of private education cannot assure each child this opportunity.[27]

The purpose of the "minimum foundation" programs has been and continues to be reduction of inequalities in education for all children. Even with minimum support programs marked inequities continue. The financial support of public school programs falls short of providing a just program of schooling for all children. Nevertheless, private systems have been less just.

Underlying all proposals for the abandonment of public schools is a philosophy which ignores these principles. This philosophy implies that education is a commodity which primarily benefits the one receiving it. From this premise it is argued that parents of the children being educated should bear the full burden.

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26. *Brown* v. *Board of Education*, 347 U.S. 483 (1954).

27. In one private day school in the South, 150 applicants for the 1959-60 school year had been rejected by March, 1959. Those passing the requirements had to be successful in a second language, had to be average or above in intelligence, and had to have above "C" grades in English.

Respect for Law

The Constitution of the United States as interpreted by the courts is the law of the land. The court interpretations of the Constitution apply in the South to all southerners as well as to all others in the rest of the fifty states. The Supreme Court has decided that in the field of public education the doctrine of "separate but equal" no longer has any place.

Regard and respect for law, especially when that law is the Constitution of the United States, seems a desirable course of action to follow. The alternatives are damage suits, court supervision, and coercion of school officials—hardly the elements of a desirable environment for education. Such judicial intervention in the operation of the schools is highly undesirable and runs counter to our traditions.

State Responsibility

A third principle is this: The state is the key to educational development in America, at least from the view of organization and administration. In other words, education is basically a state responsibility rather than a local obligation.

Over a half-century ago a state supreme court declared that "The authority over schools and school affairs is . . . a central power residing in the Legislature of the State." [28] State control over schools is the important feature of American education. In legal theory the public school is an institution under state authority. Public education is not just another function of government. The courts have held that public education is "of government." [29]

In education the state is the unit. Except as provided by constitutions, localities must look to the state for authority. In establishing public schools to enforce the obligation of education, the state and its local subdivisions have done so to enforce this obligation. The state assumes the duty it imposes that each child shall be educated.

The notion of state responsibility for public education is a relatively new one. It was during the pre- and post-Revolutionary War decades that the theory persisted that education was not a responsibility of government. In 1800 only seven of the constitutions of the existing sixteen states made specific reference to the obligation of the respective legislatures to maintain a system of free public schools. By 1860, such provision was universal among the states.

Tax Support

A fourth principle is this: The key to the whole system of public education is the right to tax for public schools and to compel citizens to

28. *State ex rel. Clark et al.* v. *Haworth*, 122 Ind. 462 (1890).

29. Newton Edwards, *The Courts and the Public Schools* (Chicago, The University of Chicago Press, 1955), p. 23.

pay taxes. School support is so vital that the positions of state school systems are to a large degree determined by how successful states are in continuing to build adequate systems of tax support.

The struggle to secure funds for public schools points up clearly what could happen again, should the principle of compulsory taxation for public schools be abandoned. Early ventures show that a tuition system for the support of schools is not sound in a democratic community. It need but be remembered that the low standards of the public schools in the early period of our history were pointed to as excuses for establishing private schools financed by tuition payment rather than taxes.

Since state abandonment of education is being contemplated in some quarters, the question of use of the taxing right is a basic one. It would seem to be clear that there is no power to tax for an object not within the purposes for which governments have committed themselves. So, it would seem that the principle of tax support for public schools would have to go by the board in some communities should public school doors be shut.

It must be remembered that taxes paid by individuals during the period when their children are in public school seldom, if ever, cover all costs of education. Taxes, however, are collected with regularity throughout one's working life. Over a lifetime, then, most families actually pay the full cost of the education of their children through their tax dollars. The couple with no children and the retired persons have grown accustomed to paying their school taxes as their share of the cost of public education. Just like "breathing out and breathing in," they have learned that it is good business to pay school taxes. Would not the inauguration of a private system of education, not supported by tax payments, get such persons quickly out of this regular and persistent habit?

Lawmaking bodies have been most cautious in implementing the principle of tax support for public schools. Hard-won gains ought not be bargained away. The long uphill fight for public school support seems to demonstrate that the important base is taxation by the state and that sources of state support should be broadened, not curtailed.

State and Church Separation*

A fifth principle is this: Public funds and property must be appropriated or used solely for the benefit of public schools, not for the aid or benefit of any private or sectarian school. This principle is consistent and accords with long established constitutional provisions.

The problem of support for private schools without question includes parochial schools. This consideration involves the principle of separation of church from the state. During a part of the nineteenth century it was not uncommon to aid private schools on the same basis as state schools.

* Editor's note: The extent to which public funds and services may properly be used in support of sectarian education is still a debated question in our society. The Southern Regional Council has no organizational position on this issue; the views presented here are those of the authors.

However, the battle to cease dividing school funds was supposedly won almost a century ago.

In most public schools education is now nonsectarian in nature. In other words, no one religious creed is taught regularly to all pupils as a matter of official policy. There seems to be little assurance from private school enthusiasts, however, that the tendency in a small number of schools to advocate openly a particular brand of Protestantism may not develop into a marked trend.

The argument runs that aid does not breach the wall between church and state. It must be remembered that attendance at a private school is a matter of choice where child and parent abide by the requirements of the curriculum, often including sectarian teachings. The essence of the sectarian position is that religious-oriented private schools are actually public in every sense but two. One exception is that the education offered is not wholly secularized. The second is that the schools are under only partial state supervision. Neither of these two distinguishing characteristics, it is contended, are true disqualifications barring aid in some just and proportional share. Are these protest schools not legitimate expressions of parental rights?

Those fearful of breaching the wall, however, raise different arguments. They insist that Americans have established their own system of public education free from church control. The contentions of opponents—that aid to private church-related schools in other countries has not produced an alliance there between the state and church—are denied. The aversion of these critics to even indirect aid is marked. To protect both church and state, no financial support must be given to those schools which have the avowed purpose of perpetuating one particular dogma and creed.

Questions regarding public tax support for the operation of private schools cannot be discussed without provoking such religious biases. This is surely unwise. State control over education came when state dollars went to schools. Financial aid to private schools would necessitate a complete re-consideration of the thinking about church and state which has crystallized over the past century.

APPENDIX

Accreditation Standards

Elementary schools are accredited by the various state accrediting agencies. The constitutions of these agencies typically provide for representation from the state departments of education, but the agencies are independent and not subject to legal control by the state governments.

The same or similar agencies accredit high schools. In addition, most high schools strive for accreditation by the Southern Association of Colleges and Secondary Schools.

While there are still a few public schools of the South not accredited even by their state agencies, the disadvantages are great, in terms of college admission and employment.

For the better service of their students and communities, southern high schools have endeavored to comply with the continually advancing standards of the Southern Association of Colleges and Secondary Schools.

The Association's standards for high schools include the following requirements and recommendations:

a. No school is accredited until it is first approved by the state accrediting agency;

b. School Program
   1. An academic year of 175 school days is the currently acceptable minimum; the daily schedules of teachers and pupils shall combine work, recreation and rest (the teacher's daily schedule should include at least one free period);
   2. No academic credit shall be given to pupils who are privately tutored;

c. Faculty
   1. The school principal shall have a graduate degree from an institution approved by the Association; the major portion of one year of his or her graduate study shall have been in preparation for administrative and supervisory functions;
   2. All teachers (except vocational) shall be graduates of colleges approved by the Association, and shall have had at least 12 semester hours of courses in education;
   3. A pupil-teacher ratio 30:1 is recognized as the currently acceptable maximum; the maximum pupil periods per week should not exceed 750 for each teacher;
   4. The minimum annual salary for a teacher is $3,000; the minimum *average* salary for teachers at any school at $3,400;
   5. The salary of the principal shall be higher than that of any faculty member;

d. Plant and Equipment
   1. "The location and construction of the buildings, the lighting, heating, and ventilation of the rooms, the arrangement of the corridors,

water supply, school furniture, and methods of cleaning shall be such as to insure hygienic conditions and safety for both pupils and teachers.

2. "The school plant shall include rooms properly arranged and equipped for such activities and programs as laboratory study, vocational programs, audio-visual education, fine and applied arts education, clinics, cafeterias, adult and physical education, and health programs.
3. "The school's physical facilities shall include a library room or rooms, readily accessible to pupils, attractive in appearance, properly lighted, fitted with standard library equipment, and with sufficient floor space to provide adequately for the maximum number of pupils which will use the library at any one time.
4. "The library collection and services shall be adequate in quantity and quality to supply the instructional aids and the opportunities for reading required to achieve the personal and cultural development of those served by the school. The library materials shall include a basic book and periodical collection as recommended by the American Library Association for high school libraries";

e. Finances
   1. Financial records must be kept in accurate and systematic form and audited at appropriate intervals;
   2. The budget must include funds for library books, periodicals and audio-visual materials; the recommended amounts are $1.50 per pupil for the first 500 pupils, $1.25 per pupil for the next 500, and $0.75 for each pupil above 1,000.

The Association's standards also include a statement of a school's purpose and the means of its achievement. The passage is as follows:

"The purpose of a school is to promote the development of the individual for personal, social, and economic living as a participating member of a democratic society. This general purpose includes the following:

Growth in understanding of, and in readiness to assume the rights and duties inherent in membership in a democratic society.

Understanding and appreciation of the social heritage and an acceptance of responsibility for evaluating and contributing to it.

Formulation and practice by the individual of moral and ethical values which will serve as guides to desirable conduct in personal, family, and community living.

Acquisition and maintenance of good physical, mental, and emotional health.

Maturation of intellectual abilities and processes, including self-direction, critical thinking, and problem solving.

Development of an appreciation of aesthetic values.

Growth in creative ability and in the use of media of communication such as speech, reading, writing, and mathematics.

Development of economic and vocational competency."

The standards of the Georgia Accrediting Commission may be considered as representative of those of state accrediting agencies.

For high schools*, these criteria include the following:

a. A new school will not be accredited until it has operated one year;

b. Curriculum and Instruction

1. Beginning with the class graduating in 1961, eighteen units, acquired in grades 9-12, are required for graduation: these are to be selected from an offering of not less than 27 unit courses: the courses required for graduation are:

English	3 units
Mathematics and Science	3 "
American History and Government . . .	1 "
Other Social Sciences	2 "
Variables or Electives	9 "

(It is recommended that only 2 of the electives be in such activities as music, art, speech, etc., and no more than 4 can be);

2. At least one-half of these units must be earned in an accredited high school; credits earned from a correspondence school are not acceptable unless validated by examination given by an accredited school; summer school credits are limited to 1½ units; no credit can be given for private tutoring;

3. The academic year is 180 school days of 5½ hours (minimum, exclusive of recess and lunch periods);

4. Classes must be sufficiently large to warrant efficient instruction, and should not exceed 40;

5. The maximum pupil-teacher ratio is 30:1, and the maximum number of pupil periods per day per teacher is 150;

6. At least 60% of the pupils entering the school must come from accredited elementary schools;

c. Faculty

1. There must be a principal and at least four full time teachers;

2. All teachers, both full and part time, must have state certificates based upon at least three years of college work. Four-fifths of the faculty must be college graduates, and beginning in 1961-62, *all* must be. A beginning teacher must have a college degree, and must have had college training in every course he or she teaches.

3. Teachers' salaries must be equal to or greater than the state's salary schedule; the principal shall be paid more than any teacher;

d. Plant and Equipment

1. "The location and construction of the building, the lighting, heating and ventilation of the rooms, the nature of the lavatories, corridors, water supply, furniture, apparatus and methods of cleaning

* High school standards apply to grades 9 through 12, and may apply also to grades 7 and 8.

shall be such as to secure hygienic conditions for pupils and teachers.

2. "The building or buildings must contain classrooms, sufficient in number and suitable in size and design, to accommodate pupils enrolled and the program of instruction.
3. "Sanitary conditions in the school must conform to the standards approved by the State Departments of Health and Education. A school must have indoor flush toilets and provisions for drinking water which conform to standards approved by the State Departments of Health and Education.
4. "Adequate fire escapes must be provided for buildings of more than one story; other safety standards must be met by the school. Monthly fire drills are required of all high schools as part of a comprehensive safety education program.
5. "Each high school must provide an attractive library room capable of seating comfortably the largest class or group of students that can be expected to use the library at any one time.
6. "A constantly growing collection of books, beginning with at least five books per pupil and not less than 500, and other materials suitable for use in a sound instructional and recreational program must be made available during all school hours and must be organized to facilitate maximum use. The schedule of annual expenditures required for library materials, exclusive of equipment, is as follows: (Same as that recommended by Southern Association.)

For elementary schools,* the standards of the Georgia Accrediting Commission include the following:

a. A new school will not be accredited until it has operated one year;
b. Curriculum and Instruction
   1. The academic year is 180 school days of 5½ hours (minimum, exclusive of recess and lunch periods), although for grades 1-4 a school day of four hours is permissible;
   2. No class should have more than 40 pupils, and the first grade not more than 30.
   3. The pupil-teacher ratio should not exceed 30:1 and *may* not exceed 35:1;
c. Faculty
   1. There must be at least four teachers;
   2. Each teacher must have a state certificate based upon at least two years of college work; beginning with 1961-62, all full-time teachers must have had at least three years of college work, unless they had taught for at least 20 years prior to 1955;
   3. Teachers' salaries must be equal to or greater than the state's salary schedule; the principal shall be paid more than any teacher;

* Elementary standards apply to grades 1-6, and may be extended to grades 7 and 8.

d. Plant and Equipment

1. Requirements substantially the same as the first four quoted above for high schools are imposed.
2. At least $0.75 per pupil must be spent for library purposes (books, periodicals, maps, and audio-visual materials—exclusive of equipment) within the school year, and the book collection must be constantly growing; basic collection of at least five books per pupil is recommended.

The summations given above of accrediting criteria are not complete, and are not intended to do more than indicate the nature of the requirements. The full statement of the Southern Association of Colleges and Secondary Schools (795 Peachtree Street, N.E., Atlanta 8, Ga.) is to be found in its booklet, *Constitution and Standards, December 4, 1958.* The Georgia criteria are taken from the *Official Bulletin 1958-1959* of the Georgia Accrediting Commission (231 State Office Building, Atlanta 3, Ga.)